

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Finance and Tax Committee

BILL: CS/SB 1884

INTRODUCER: Finance and Tax and Senator Altman

SUBJECT: Homestead Assessments

DATE: April 6, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Favorable
2.	Fournier	McKee	FT	Fav/CS
3.			EA	
4.			WPSC	
5.				
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
 B. AMENDMENTS..... Technical amendments were recommended
 Amendments were recommended
 Significant amendments were recommended

I. Summary:

This bill provides additional criteria under which a transfer of homestead property is not considered a change of ownership that would require the property to be reassessed at just value. The bill also clarifies that a leasehold interest which qualifies for a homestead exemption under s. 196.031 or s. 196.041, F.S., shall be treated as an equitable interest.

This bill substantially amends s. 193.155 of the Florida Statutes.

II. Present Situation:

Property Valuation

Just Value - Section 4, Art. VII, of the State Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Under Florida law, "just valuation" is synonymous with "fair market value", and is defined as what a willing buyer would pay a willing seller for the property in an arm's length transaction.¹

¹ Section 193.011, F.S., see also *Walter v. Shuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So.2d 4 (Fla. 1973).

Assessed Value -The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.² Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.³ Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or totally exempt from taxation.⁴ Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.⁵ Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.⁶ The assessed value of nonhomestead residential property and nonresidential property may not increase by more than 10 percent over the previous year's assessment unless there has been a change in ownership or control or, in the case of nonresidential property, a qualifying improvement has been made.⁷ The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.⁸ Certain working waterfront property is assessed based upon the property's current use.⁹

Taxable Value- The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.¹⁰

Homestead Exemption

Article VII, section 6, of the State Constitution, provides that:

every person who has legal or equitable title to real estate and who maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, is exempt from taxation, except assessments for special benefits, in an amount equal to \$25,000 and, for all levies except school district levies, on the assessed valuation greater than \$50,000 and up to \$75,000. The real estate may be held in legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.¹¹

An individual or family unit may not be entitled to more than one homestead exemption.¹²

² The constitutional provisions in section 4, Art. VII, of the State Constitution, were implemented in Part II of ch. 193, F.S.

³ Art. VII, section 4(a) of the Florida Constitution.

⁴ Art. VII, section 4(c) of the Florida Constitution.

⁵ Art. VII, section 4(e) of the Florida Constitution.

⁶ Art. VII, section 4(f) of the Florida Constitution.

⁷ Art. VII, sections 4(g), (h) of the State Constitution.

⁸ Art. VII, section 4(i) of the Florida Constitution.

⁹ Art. VII, section 4(j) of the Florida Constitution.

¹⁰ Art. VII, sections 3 and 6 of the Florida Constitution. *See also* ch. 196, F.S.

¹¹ Art. VII, section 6(a) of the Florida Constitution. *See also* s. 196.031, F.S.

¹² *See* s. 196.031(1)(a), F.S., and Art. VII, section 6(b) of the Florida Constitution.

“Save Our Homes” Assessment Limitation

The “Save Our Homes” (SOH) provision was implemented into section 4(d), Art. VII, of the State Constitution, in 1992, to limit the amount a homestead’s assessed value can increase annually to the lesser of three percent or the Consumer Price Index (CPI).¹³ The amendment specifically provides that:

- All persons entitled to a homestead exemption under section 6, Art. VII of the State Constitution, shall have their homestead assessed at just value by January 1 of the year following the effective date of the amendment.
- Thereafter, annual changes in homestead assessments on January 1 of each year shall not exceed the lower of:
 - Three percent of last year’s assessment; or
 - The Consumer Price Index (CPI) for All Urban Consumers, U.S. City Average, all items 1967= 100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.
- No assessment may exceed just value.

In 1994, the Legislature enacted ch. 94-353, Laws of Florida, to implement the Save Our Homes (SOH) amendment into s. 193.155, F.S. As provided in the constitutional amendment, this legislation requires all homestead property to be reassessed annually on January 1 of each year in accordance to the SOH limitations.

Change of Ownership

Section 4, Art. VII, of the State Constitution, provides that upon a change in property ownership, any SOH savings on that property will no longer apply and the property must be re-assessed at just value as of January 1 of the following year.¹⁴ A change in ownership is defined under Florida Statutes as a “sale, foreclosure, or transfer of legal title or beneficial title in equity”. Pursuant to s. 193.155(3), F.S., there is no change in ownership if:

- The same person is entitled to the homestead exemption subsequent to the change or transfer and:
 - The transfer of title is to correct an error;
 - The transfer is between legal and equitable title;¹⁵ or
 - The change or transfer is a result of an instrument in which the owner is listed as both the grantor and grantee of the real property and one or more other individuals are additionally named as grantee (unless one of the other individuals applies for a homestead exemption on the property);
- The transfer is between husband and wife, including a transfer to a surviving spouse or a transfer due to a dissolution of marriage;

¹³ Art. VII, section 4(d) of the Florida Constitution.

¹⁴ See Art. VII, section 4(d)(4) of the Florida Constitution and s. 193.155(3), F.S.

¹⁵ Legal title “evidences apparent ownership but does not necessarily signify full and complete title or beneficial interest”, where as equitable title “indicates a beneficial interest in property and ... gives the holder the right to acquire formal legal title”. See BLACK’S LAW DICTIONARY 1523 (8th ed. 1990).

- The transfer occurs by operation of law under s. 732.4015, F.S.¹⁶; or
- The transfer occurs between the owner and a legal or natural dependent who permanently resides on the property, upon the death of the owner.¹⁷

There is no exception currently provided for the transfer of property between equitable interests.

Qualified Personal Residence Trusts and Leasehold Interests¹⁸

A Qualified Personal Residence Trust (QPRT) is one type of equitable title that is permitted to be transferred under the Internal Revenue Code. A QPRT is an equitable device that allows a settler to transfer his or her personal property into an irrevocable trust while retaining the right to reside on the property for a specified term of years at which point the property is then transferred to the beneficiaries.¹⁹ The policy behind a QPRT, is to permit “homeowners to transfer property to their children while avoiding future estate taxes”.²⁰ Beginning in 1995, Florida courts have allowed these settlers/transferees to retain their homestead exemptions while residing on the property throughout their retained term interest.

Robbins v. Welbaum- In *Robbins*, a husband and wife transferred their residence into an irrevocable inter vivos trust retaining a possessory right to live on the property until the earlier of ten years or their death.²¹ As trustees with a beneficial title to the property, the homeowners applied for a homestead exemption which was denied by the property appraiser on the grounds that the QPRT limited their use of the residence. After the Value Adjustment Board granted a petition for the exemption, the appraiser appealed to the Third District Court of Appeal for a case of first impression granting the homeowners a homestead exemption. The district court held that s. 196.031, F.S., grants a homestead exemption to persons with a good faith legal or beneficial title to a home, which includes “residents whose stay on the property is limited by jointure or settlement” as is the case here.²² The court further held that neither the constitution nor Florida Statutes required a special time limit on the beneficial title as a prerequisite for a homestead exemption.²³

Nolte v. White- In *Nolte*, a homeowner was denied a homestead exemption for property that she conveyed into a QPRT with a right to reside for a term of eight years, on the grounds that she did not hold a life estate in the property.²⁴ Upholding the rationale in *Robbins v. Welbaum*, the Fourth District Court of Appeal stated that a taxpayer is still entitled to a homestead exemption even if the provisions of the QPRT limit his or her use of the residence to a term of years.²⁵

¹⁶ Section 732.4015, F.S., provides that the homestead is not subject to devise upon the death of the owner when the owner is survived by a spouse or minor children, and may be devised to the owner’s spouse if there are no minor children.

¹⁷ Section 193.155(a), F.S.

¹⁸ Section 680.1031(1)(m), F.S., defines a *leasehold interest* to mean “the interest of the lessor or the lessee under a lease contract”.

¹⁹ Baskies, Jeffrey A. *Understanding Estate Planning With Qualified Personal Residence Trusts*, 73 Fla. B.J. 72 (1999).

²⁰ *Robbins Welbaum*, 664 So. 2d 1 (Fla. 3d DCA 1995) citing Peter A. Borrok, *Four Estate Planning Devices to Get Excited About*, N.Y.St. B.J. at 32 (Jan. 1995).

²¹ *Id.* at 1.

²² *Id.* at 2 citing s. 196.041, F.S.

²³ *Id.* at 2.

²⁴ 784 So. 2d 493 (Fla. 4th DCA 2001).

²⁵ *Id.*

Higgs v Warrick - In *Higgs*, a homeowner created a trust using his single family residence as the trust res and designating his heirs as the beneficiaries in exchange for a 99-year lease to reside on the property.²⁶ After placing his home into the trust he applied for and received a homestead exemption. However, once he transferred the trust to his heirs the property appraiser denied him a homestead exemption, even though he continued to reside in the home. On appeal, the Value Adjustment Board granted an exemption and the property appraiser appealed to the circuit court and again to the Third District Court of Appeal which held that a 98-year plus lessee of a residential property which is permanently occupied as a residence qualifies for a homestead exemption pursuant to the statutory language provided in ss. 196.031, and 196.041, F.S.²⁷

Change of Ownership of Non-Homestead Property

Subsections (g) and (h) of sec. 4. of Art. VII of the State Constitution limit the annual increase in the assessed value of non-homestead residential real property, and nonresidential real property, respectively. Subsection (g) requires that non-homestead residential property be assessed at just value after a change in ownership or control, as defined by general law, including any change of ownership of the legal entity that owns the property. Subsection (h) allows the Legislature to provide for assessment at just value after a change in ownership or control, as defined by general law, including any change of ownership of the legal entity that owns the property, for nonresidential real property.

Sections 193.1554 and 1555, F.S., require assessment at just value after a change in ownership or control for non-homestead residential or nonresidential real property. Section 193.1554, F.S. provides that, for non-homestead residential property, there is no change in ownership if:

- there is a transfer of title to correct an error
- there is a transfer between legal and equitable title, or
- there is a transfer between a husband and wife, including a transfer to a surviving spouse or a transfer due to a dissolution of marriage.

Section 193.1555, F.S., provides that, for nonresidential real property, there is no change in ownership if:

- there is a transfer of title to correct an error, or
- there is a transfer between legal and equitable title.

Section 193.1556, F.S., requires any person or entity that owns non-homestead residential or nonresidential real property to notify the property appraiser promptly if there is change of ownership or control. It also provides that, if a failure to notify results in tax avoidance, the property owner is subject to payment of back taxes plus penalties and interest.

III. Effect of Proposed Changes:

This bill amends s. 193.155(3), F.S., to provide additional exceptions to the requirement that homestead property must be reassessed at just value upon a change of ownership, by providing that no change in ownership occurs when:

²⁶ 994 So.2d 492 (Fla. 3d DCA 2008).

²⁷ *Id.* at 493.

- A transfer of property is between equitable title and equitable title and no additional person applies for a homestead exemption on the property.
- Legal or equitable title is changed or transferred between a husband and wife, including a change to a surviving spouse or a transfer due to a dissolution of marriage.
- The transfer of property occurs by operation of law to the surviving spouse or minor child or children under s. 732.401, F.S.

The bill also clarifies that a leasehold interest which qualifies for a homestead exemption under ss. 196.031 or 196.041, F.S., shall be treated as an equitable interest.

The bill amends ss. 193.1554 and 193.1555, F.S., to provide that the trading of shares of publicly traded companies on a public exchange cannot create a change of ownership or control for the purposes of the assessment cap under these sections. This does not apply to changes of ownership that occur through mergers or acquisitions.

The bill amends s. 193.1556, F.S., to provide that if a change of ownership is recorded by a deed or other instrument in the public records of the county where the property is located, the recorded deed or other instrument shall serve as notice to the property appraiser and the owners are not required to notify the property appraiser of the transfer. (This change conforms to current Department of Revenue draft emergency rule 12DER09-XX²⁸.) It also requires the Department of Revenue to provide a form by which a property owner may provide notice to all property appraisers of a change in ownership or control. This form must allow a property owner to list all property in this state which is owned or controlled by it for which transfer of ownership or control has occurred but has not been previously noticed. The property owner will be responsible for providing the notice to each property appraiser in whose county the property is located, but will not have to prepare county-specific forms. Providing notice on this form constitutes compliance under this section.

This bill shall take effect on July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Art. VII, State Constitution, provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

Because this bill does not qualify for one of the exemptions provided in s. 18, Art. VII, State Constitution, and creates new exceptions to the reassessment of homestead property at just value upon a change in ownership, the bill does fall under the mandate provisions of s. 18, Art. VII, State Constitution, and may require a two-thirds vote of the membership of each house of the Legislature.

²⁸ <http://dor.myflorida.com/dor/property/legislation/amendment1/pdf/rule080609.pdf>

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

This bill creates additional exceptions for the reassessment of homestead and non-homestead property at just value upon a change in ownership. These exceptions will likely reduce ad valorem tax revenues. The Revenue Estimating Conference has determined that the bill has an indeterminate negative impact on property tax revenue of local governments.

B. Private Sector Impact:

Property owners eligible under these new exceptions will see a reduction in their ad valorem taxes.

C. Government Sector Impact:

The Revenue Estimating Conference has determined that the homestead and non-homestead property provisions of the bill have an indeterminate negative impact on property tax revenue of local governments.

This bill requires the Department of Revenue to make minor amendments to Rule 12d-8.0061, Florida Administrative Code (F.A.C.).²⁹ The department is also required to develop a form for notifying property appraisers of changes in ownership of non-homestead property if a deed or other instrument is not recorded in the county where the property is located.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁹ Department of Revenue, *Senate Bill 1884 Fiscal Analysis* at 2 (Feb. 25, 2010) (on file with the Senate Committee on Community Affairs).

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Finance and Tax on April 6, 2010:

The committee substitute provides that:

- The trading of shares of publicly traded companies on a public exchange cannot create a change of ownership or control for the purposes of the assessment cap on non-homestead property. This does not apply to changes of ownership that occur through mergers or acquisitions.
- If a change of ownership is recorded by a deed or other instrument in the public records of the county where the property is located, the recorded deed or other instrument shall serve as notice to the property appraiser and the owners are not required to notify the property appraiser of the transfer.
- The Department of Revenue is required to provide a form by which a property owner may provide notice to all property appraisers of a change in ownership or control, providing such notice on this form constitutes compliance under this section. This form must allow a property owner to list all property in this state which is owned or controlled by it for which transfer of ownership or control has occurred but has not been previously noticed. The property owner will be responsible for providing the notice to each property appraiser in whose county the property is located, but will not have to prepare county-specific forms.

- B. **Amendments:**

None.